

Attorney Docket No.: 266/165 (UMD-0032)
Inventors: Kiran Madura
Serial No.: 09/918,036
Filing Date: July 30, 2001
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REMARKS

Claims 1-18 are pending in the instant application. The pending claims have been subjected to a Restriction Requirement under 35 U.S.C. §121.

Specifically, the Examiner suggests that present invention comprises four distinct groups:

Group I, claims 1-5, drawn to a method for rapid and efficient purification of proteasome, classified in class 530, subclass 412.

Group II, claims 6-12, drawn to a DNA construct and method for assessing the proliferative potential of malignant cells, classified in class 435, subclass 6.

Group III, claims 13-15, drawn to a DNA construct encoding a thermostable fusion protein, classified in class 530, subclass 23.4.

Group IV, claims 16-18, drawn to a DNA construct encoding a fusion protein for selecting for drug resistance in mammalian cells, classified in class 435, subclass 7.23.

The Examiner suggests that groups I and II are unrelated because the methods are not disclosed as capable of use together. It is suggested that Groups I, III, and IV are unrelated because the methods of purifying proteasome are unrelated to a DNA

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construct encoding a thermostable protein or a protein used in selecting for drug resistance.

The Examiner further suggests that Groups II, III, and IV are unrelated because the DNA construct and the method of assessing the proliferative potential of malignant cells are not disclosed as capable of working together with DNA constructs encoding a thermostable fusion protein or a protein used in selecting for drug resistance. It is further suggested that groups III and IV are unrelated because the DNA encoding a thermostable fusion protein and the DNA construct encoding a protein used in selecting for drug resistance are different chemical entities.

Applicants respectfully traverse this restriction requirement.

In accordance with MPEP § 803, there are two criteria which must be met for a proper restriction requirement. The first is that the inventions be independent or distinct; the second is that there would be serious burden on the Examiner if the restriction is not required. Searching for a DNA construct encoding a thermostable fusion protein in addition to searching for a DNA construct encoding a fusion protein for selecting for drug resistance in mammalian cells does not present a serious

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burden to the Examiner. A search encompassing the fusion protein themselves would necessarily reveal prior art references describing their use.

In contrast, the economic burden on Applicant by restricting this application into four separate applications is quite serious and may prohibit Applicant from obtaining the full patent coverage to which they are entitled.

In the present invention, claims 6-12 (group II) relate to a DNA construct and a method for assessing the proliferative potential of malignant cells. Groups III and IV are drawn to a DNA construct encoding a fusion protein that can be used in the method for assessing the proliferative potential of malignant cells of group II.

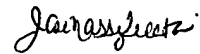
Accordingly, since this restriction requirement does not meet both criteria required under MPEP §803 to be proper, withdrawal of this restriction requirement is respectfully requested.

However, in an earnest effort to be fully responsive and facilitate prosecution of this application, Applicants elect to prosecute Group II, claims 6-12, drawn to a DNA construct and

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method for assessing the proliferative potential of malignant cells, with traverse.

Respectfully submitted,



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